

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Kendra L Davis,

Plaintiff,

v.

Andrew M. Saul, Commissioner of Social
Security Administration,

Defendant.

Civil Action No.: 0:19-cv-02271-JMC

ORDER

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) filed on April 29, 2020. (ECF No. 30.) The Report addresses Plaintiff Kendra L Davis’s (“Plaintiff”) motion for voluntary dismissal without prejudice. (*Id.* at 1.) The Report recommends the court grant the motion and dismiss this matter without prejudice. (*Id.* at 2.) For the reasons stated herein, the court **ACCEPTS** the Report and **GRANTS** Plaintiff’s motion for voluntary dismissal without prejudice. (ECF No. 26.)

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards in the instant matter. (ECF No. 30 at 1-2.) As brief background, the Administrative Law Judge (“ALJ”) determined Plaintiff was not disabled for purposes of the Social Security Act (“the Act”) and denied Plaintiff’s claim for disability insurance benefits. (ECF No. 20-2 at 22.) Thereafter Plaintiff, who is *pro se*, filed the instant action on August 13, 2019. (ECF No. 1.)

On March 30, 2019, the Magistrate Judge issued an order notifying Plaintiff that she had fourteen days to file a brief, and warned Plaintiff that not doing so could result in dismissal for

failing to prosecute. (ECF No. 21.) A short time later Plaintiff filed a motion “request[ing] to have [her] case dismissed, without prejudice, against the Social Security Administration as of April 9, 2020. (ECF No. 26.) In response, the Government stated it did not oppose the motion to dismiss. (ECF No. 27.)

II. STANDARD OF REVIEW

As explained by the Magistrate Judge, Federal Rule of Civil Procedure 41(a)(2) provides that “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” “Generally, a plaintiff’s motion for voluntary dismissal without prejudice under Rule 41(a)(2) should not be denied absent plain legal prejudice to the defendant.” *KJ Appliance Ctr., LLC v. BSH Home Appliances Corp.*, No. 2:19-CV-795-RMG, 2020 WL 4352380, at *2 (D.S.C. July 29, 2020) (citing *Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986)).

III. DISCUSSION

Here, the court has carefully examined the Report and concludes Plaintiff’s motion to dismiss should be granted. Plaintiff’s motion, which seeks voluntary dismissal without prejudice, sets forth “terms that the court considers proper.” FED. R. CIV. P. 41(a)(1). Moreover, as the Commissioner does not oppose the motion, there is consequently no “plain legal prejudice to the defendant.” *See Andes*, 788 F.2d at 1036. The court thus adopts the Report herein.

IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 30) and incorporates it herein. Plaintiff's motion for voluntary dismissal without prejudice (ECF No. 26) is therefore **GRANTED**.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

September 1, 2020
Columbia, South Carolina